

## JUVENILE DELINQUENCY OR YOUTHFUL CRIMINALITY?

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A story is often told of the Devil. He was auctioning his weapons to those who were interested. Hate, greed and lust were among those weapons on his counter. Someone noticed that he was keeping one of them back and not showing it for sale. An interested spectator asked about this particular weapon.

"Oh," replied the Devil, "that is my favorite and most effective one."

On closer inspection, it turned out that this weapon carried the label "Indifference."<sup>1</sup>

I am reminded of the Devil's evaluation of this particular weapon each time I consider the seeming indifference of the general public to the rising crime rate, and I am especially appalled at the consequences of public apathy in the surge of youthful criminality across this nation. There is a growing possibility that Nikita Khrushchev will never be forced to make good his boast of burying us—we may save him the trouble by doing it ourselves through the dissipation of the youth of our country.

An emotional overstatement of the case? Not at all. Reach no quick decision that this is the prediction of a calamity-howler, indulging himself in a very old and tragic lament about the moral climate of his native land. Think back for a moment upon the history of former great empires—Babylon, Greece, Rome—and recall how each was brought down, either through internecine warfare or because a weakened moral fiber made it easy for cynicism and indifference to replace dedication and responsibility.

America is a land of wonder in which there is a strong conviction that everything will be superseded by something better tomorrow. We are driven by a feverish desire to excel and haunted by a vague dread we may fail in our desire to produce the best. I hardly think we can afford the enervating luxury of producing the best and the biggest crime wave in history!

Even more ominous is the apathetic attitude with which the general public seemingly views the current number of young people who represent crime statistics in the United States. Cynicism and indifference are evident in the shock resistance we have built up concerning the serious depredations of our young people, and when I consider the very disquieting increase in the viciousness of the crimes they are committing daily, I am not too certain that internecine warfare has not already been declared.

Crime is not a new development; it is as old as time. And juvenile delinquency has been its constant companion. I understand there is a

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1. Droke, *Speaker's Book of Illustrative Stories* 183 (1956).

tablet inscribed with the pictorial hieroglyphics of ancient Egypt on which the message, translated by scholars, reads: "The times are out of joint, children do not obey their elders, and everyone writes a book."<sup>2</sup> Even Socrates is alleged to have declared: "The children now love luxury. They have bad manners, contempt for authority, they show disrespect for elders and love chatter in place of exercise. They no longer rise when their elders enter the room. They contradict their parents, chatter before company, gobble up dainties at the table, and tyrannize over their teachers."<sup>3</sup>

Although the problem of delinquency is certainly not new, current statistics indicate a development alarming enough to make it imperative we make some adjustments in our thinking and in our approach concerning the responsibility of young people for major crimes. Today's figures relating to teen-agers and crime tend to show we have made a serious mistake in our failure to give specialized attention to the hard core of youthful criminality before it reached a crisis stage.

What can be done?

The answer to that question would be much less complex if the actual problem were truly one of "juvenile delinquency." In the Twenties and the Thirties, juvenile delinquency, in general, meant such things as truancy, minor vandalism and petty theft. Today, the term includes armed robbery, assault and even murder. I think it is incredible to stretch the definition of "delinquency" that far! In referring to serious crimes committed by teen-agers, I prefer the term "youthful criminality" and not "juvenile delinquency." We should not permit actual crimes to be thought of in terms of the delinquencies of a past era. I am not speaking of the relatively minor misdemeanors usually associated with the process of growing up. It is the killings, the rapes and the robberies of innocent people by youthful criminals that concern me.

Basic to the attempt to solve any problem is a clear understanding of the terms in which the problem is stated. The difficulties connected with the maze identified as "juvenile delinquency" are compounded by the very use of the term itself.

The words "juvenile" (*iuuenilis*) and "delinquent" (*delinquere*) were both used at least as far back as ancient Roman times, but the modern term "juvenile delinquency" is only a little over a century old. The first definite record of its use was in the 1820's when the Society for the Prevention of Juvenile Delinquency was formed in New York City.<sup>4</sup> The legal status of juvenile delinquency was created as a protective device to remove the child from the classification of criminal, and to provide special courts to safeguard his rights.

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2. Thomas, *Institute on Juvenile Delinquency* 5 (1962).

3. Teeters & Otto, *The Challenge of Delinquency* 29 (1950).

4. Tait & Hodges Jr., *Delinquents, Their Families, and the Community* 18 (Thomas ed. 1962).

The concept of "child" is a cultural definition, varying from society to society and from age to age. Although most states do not indicate the minimum age at which a young person shall be considered a juvenile, it has become customary in most jurisdictions, and stipulated by statute in others, to consider seven years as the lower limit for juvenile court handling. The upper age limits are extremely variable. At the present time most of our jurisdictions have established eighteen years as the upper age limit for legal consideration as a juvenile; however, some states hold a person to be a juvenile up to the age of seventeen, while others consider a person an adult when he is sixteen or older. The Federal government, by statute, has set eighteen as the upper limit for the handling of individuals as juveniles.<sup>5</sup>

To add to the confusion, there are many contradictory statements as to what actually constitutes juvenile delinquency. Collectively, state statutes manage to include practically every type of juvenile behavior within their definitions. In one or the other, you will find that the legally defined juvenile delinquent is habitually drunk, incorrigible, disorderly, given to sexual promiscuity, growing up in idleness, smoking cigarettes, using vile language, patronizing public poolrooms, habitually wandering about railroad yards, begging, and so on.

Based on whether the term is being used in an ethical, legal, psychiatric or social connotation, "juvenile delinquency" has come to mean all things to all men. Bloch and Flynn point out that the variations in statutory definition and administrative practice concerning juvenile delinquency constitute a "legalistic wilderness."

This is reminiscent of the plight in which the clinical psychologist found themselves a few years ago when they attempted to formulate an adequate definition of intelligence based upon standard measuring instruments. In view of the wide variety of factors entering into the final intelligence quotient score, certain psychologists tried to resolve their dilemma by defining intelligence as "that which the intelligence test tests!" By the same token, under our existing legal codes, any child becomes a delinquent who the courts decide may become a delinquent.<sup>6</sup>

This becomes so meaningless as to be of little help in clarifying the problem. It seems that the unprecedented growth of our society and the mobility of our population during the past half-century, with the resulting confusion of social standards, have left us completely incapable of charting a sensible course towards an adequate solution. We have literally hundreds of books, studies, surveys, analyses and projects on the subject and most of them admit we cannot reach an agreement on a basic definition of a "juvenile delinquent." If we begin each study, each analysis, each survey, with no clear understanding of the problem itself, how can we hope to

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5. Bloch & Flynn, *Delinquency, The Juvenile Offender in America Today* 6 (1956).

6. Bloch & Flynn, *op. cit.* supra note 5, at 9.

approach the vital questions of cause, prevention and treatment with any logical expectation of success? Such frustration may well lead one to wonder if our only solution is one of resignation to a continual rise in youthful criminal statistics. I think not.

I do believe, however, that our first step must begin with a realistic redefinition of a "delinquent," and it must be made without any use of the usual misplaced sentimentality that has previously clouded any reasonable consideration of this grave problem. My personal feeling is that we should eliminate all minor infractions from the definition, making them the concern of social agencies, and concentrate our attention on the serious law violations of the juvenile. Truancy, stubbornness and waywardness, while frequently indicative of future serious law violations, are essentially minor infractions, and to group them indiscriminately with the major felonies materially detracts from our chances of controlling youthful criminality effectively. The current inclination to have "juvenile delinquency" include the entire spectrum of misbehavior from ordinary youthful exuberance through the chronically dangerous offender to the deeply disturbed pathological cases is as impractical as hunting snowbirds with elephant guns. It occurs to me that we could begin our reassessment of the problem by returning to the English common law definition of delinquency for guidance. It regards delinquency simply as any act that, if committed by an adult, would be considered criminal.

Just how bad is the problem?

Crime in the United States increased four times faster than the nation's population in the last five years! Serious crimes—murder, robbery, forcible rape, burglary, aggravated assault, larceny of fifty dollars or more, automobile theft—have mounted steadily since the end of World War II. In 1951, for the first time, they topped the one million mark, and in 1962 we passed the two million mark. There is a serious crime committed every fifteen seconds in the United States.

This should be disturbing to every citizen of our country, for it is a grim and unhappy commentary on the moral climate we are supinely tolerating today. Graver still, however, is one chilling development in these statistics with respect to our most precious asset—the youth of the United States. In 1962, we witnessed the fourteenth consecutive year in which youthful criminality increased over the previous year! During that period, young offenders comprised 62 per cent of the arrests for auto theft, 51 per cent for larceny, 49 per cent for burglary, 25 per cent for robbery, 19 per cent for forcible rape and 13 per cent for aggravated assault. For all serious crimes committed in the nation in 1962, juveniles were represented in a staggering 45 per cent of the total arrests! Even these figures do not tell the entire story of youthful involvement with the law since they do not

include the large but undetermined numbers of young people handled in unofficial proceedings.

While it is true that a very small percentage of those under 18 become entangled in criminal activity, arrest statistics indicate our young people are contributing a highly disproportionate share to the over-all crime picture. This imbalance is emphasized by the fact that during the past decade—1953-1962—arrests of persons under the age of 18 have climbed 115 per cent while the total number of young people in the 10-to-17-year age group rose 47.6 per cent. When we recognize that arrests of juveniles have increased more than twice as fast as their representation in the national population, we must admit we are now dissipating our only hope for the future with a terrifying rapidity.

Statistics can tell a succinct story, but when taken in large doses they can have a numbing effect. Having no wish to blur the situation with a surfeit of numbers, I would like to highlight the seriousness of this spiral in youthful criminality by citing some examples in one crime category in which young people have been quite active.

Last year youthful criminals accounted for 8 per cent of the arrests for murder and nonnegligent manslaughter. The savagery and the senselessness of some of these killings in the past twelve months are unbelievable.

On our east coast, a 15-year-old, angry because his mother refused him permission to go to the beach, reportedly got a hunting knife and a piece of pipe, walked next door and stabbed and beat the mother of nine to death. The reason? According to newspaper reports, "I was just mad and had to take it out on somebody."

News accounts of another eastern incident tell how a 16-year-old youth tarried out of curiosity on a street corner near his home to watch a group who were fighting and "horsing around." This boy was promptly surrounded and ordered to "beat it." Since he did not move fast enough, he was knocked down, stomped on, and stabbed to death.

Across the continent, two teen-agers, ages 15 and 17, were reported as having attempted to obtain money by "mugging" a 63-year-old itinerant dishwasher. During the struggle, the victim was severely beaten, knocked unconscious, kicked in the head repeatedly and stomped. Leaving the old man dying in the street, the two young toughs fled with his wallet. It contained 30 cents.

In one of our southern states, police arrested a 16-year-old boy who admitted he had helped beat a man to death, using a two-by-four with a ten-penny nail imbedded in one end. This teen-ager said he and a companion stopped by a vacant lot where drunks frequently slept. They found a victim "passed out," rolled him into a ditch, stripped him and began stomping and beating him, using the two-by-four. Then they piled his

clothing on his bare chest and set it afire. Police said the "delinquent" had been arrested 19 times as a juvenile since 1952.

From the midwest, a news item recently related how an 11-year-old child strangled a 4-year-old girl playmate for no reason except that he "got the idea from television." This somber fifth grader said he perfected his technique by testing "the idea" on two stray cats before successfully executing it on his tiny victim.

According to a news account from one of our largest cities, death was agonizing and brutal for the victim of one 17-year-old youth. After she was raped, she was beaten with a spiked board and a metal pipe, slashed with a pocketknife and stuffed in a furnace. She happened on the scene when he was "looking for a woman."

Young people also "excel" in other fields besides savage murder. Not too many months ago, a news item told of firemen fighting a large fire on the west coast while subjected to a heavy barrage of stones and tree limbs hurled by youths on adjoining cliffs. Two policemen who moved in to protect these firemen suffered serious injuries when they were bombarded with rocks "as big as baseballs." The newspaper noted this outrage took place at a time when it was touch and go whether at least ten firemen, battling the blaze from a collapsing rooftop, were to live or die.

Commenting editorially on this episode, the paper declared the community had more on its hands than mere "juvenile delinquency." It concluded this was hoodlumism and it should be so dealt with. I agree. After having countless similar news items and reports flow across my desk daily, telling of revolting acts of every description committed by individuals still in the second decade of their lives, I am convinced something is badly wrong with our present approach to this problem. It seems to me that much of our experience to date plainly shows that we have failed in our attempt to handle many of our teen-agers as "delinquents" in juvenile courts which operate on the doctrine of *parens patriae*. As acts of youthful criminals become more widespread and more violent, it appears very necessary for us to find some means of bridging the gap between our juvenile courts as currently constituted and the adult criminal courts.

The idea of some type of youth court applying modified criminal court procedures to those beyond juvenile court jurisdiction, but still under twenty-one, is not original nor is it new. Chicago, Detroit, New York and Philadelphia have experimented with the establishment of specialized courts for youthful offenders who are neither the children who require the state's protection nor the completely responsible adult punished on an "eye-for-an-eye" basis.

The first youth court was the Boys' Court, established March 16, 1914, as a branch of the Municipal Court of Chicago. It was followed by a similar

one in Philadelphia in 1915, in New York in 1923 and Detroit in 1927.<sup>7</sup>

Until now the idea of youth courts has not been particularly successful; however, many concerned individuals, in re-examining the philosophy of modern juvenile court laws, approve of the conclusion recently expressed by a judge with juvenile court experience. In a widely disseminated article, the Honorable Robert Gardner, Judge of Superior Court, Santa Ana, California, declared: "For 64 years we have tried the guardianship and protective philosophy in handling antisocial young people. The results would hardly qualify as a howling success."<sup>8</sup>

Judge Gardner expresses his belief that many of our failures of today actually date back to 1899 when the first juvenile court in its present form was organized in Chicago "to regulate the treatment and control of the dependent, neglected and delinquent children." He believes we "got off the track" in that very first law when we commingled "dependent" or "neglected" and "delinquent." Not being a criminal court, each subsequent juvenile court established on the basis of this original law abandoned the punitive approach in favor of a philosophy of protection of the minor.

The Judge advocates an extension of the old youth court idea, saying there should be two courts established to deal with adolescents. One of these would be concerned with the dependent and neglected children. It would operate under the guardianship or protective philosophy. The other would deal with youths charged with violations of the law—with these youths being granted all the constitutional rights afforded adults charged with a crime. These rights are largely nonexistent under present juvenile court laws.

This particular court would still be distinct from the adult criminal court, but its judge would not be the youthful offender's guardian; rather, he would be in Judge Gardner's words:

. . . the stern conscience of society, the protector of the rights of the innocent, the implacable assessor of retribution to the malefactor. In this court the important change would be that the judge will assess punishment for wrongdoing, not act as a guardian or protector for the wrongdoer.

These ideas deserve our serious consideration for we are badly in need of a bold and positive program of action against youthful criminality across the entire country. No suggestion of merit should be dismissed because it offends the "bleeding hearts" whose charitable concern over the rights of youthful criminals has completely blinded them to the rights of law-abiding members of society.

Moreover, there is no apparent reason for more prolonged theorizing about the situation, permitting our attention and energy to be focused on "pure research" rather than in wrestling with the actual problem of youth

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7. Bloch & Flynn, *op. cit.* supra note 5, at 467.

8. FBI Law Enforcement Bull., Aug. 1963, p. 4.

and crime. It is time we admitted that we already have more knowledge about the problem and its prevention than we are currently using.

Make no mistake. I have absolutely nothing against research. We do need and will continue to need basic research into the causes of youthful criminality and into the progress and efficacy of the various methods of prevention and rehabilitation. My concern lies in the fear we may be permitting the research project to become the answer instead of being the search for a solution.

All too often we have had the public clamor for action when it has been momentarily aroused by a particular bizarre or senseless offense by a teen-ager—only to have the outcry answered with the appointment of a committee and the inauguration of a study. Some run only for the duration of the public concern, their purpose having been served when the vocal protests are calmed. Others, however, become the nearest thing to perpetual motion in existence.

One author, in a recent book, reported that he asked experts and professionals in the juvenile field three questions. One was what the expert would do if he had unlimited power to deal with the problem. One man, described as having a "towering professional reputation," replied he did not know. Pressed as to how he would use a million dollars if someone gave it to him to help control delinquency, he responded, "Oh, that's easy. I'd just set up a study. After all, we don't know what causes the problem."<sup>9</sup>

The FBI has reached some conclusions as to the causes of youthful criminal acts which are not especially startling. In fact, many laymen and experts share them. Basically, parental failure is considered as one of the major factors. Too many parents make the mistake of neglecting to teach their children the doctrine of individual responsibility. Substituting self-indulgence through giving a child too much too soon, many an otherwise intelligent adult has developed a blind spot concerning the conduct of his child. As a consequence, the child often matures with a warped sense of values because his self-discipline was undermined by his parents' abdication of adult responsibility.

The moral deterioration in our people is another basic cause for the large juvenile involvement in criminal activity. This deficiency is quite evident in the indifference of the general public to the rising crime rate. It is seen in the breakdown in the moral and ethical standards of far too many adults which is in turn reflected in the attitude of contempt for those values on the part of many of our young people.

And there are other valid reasons known for the cause of criminal acts in individual instances—broken homes, immorality, emotional disturbances, lack of spiritual training, an inadequate school system, physical and mental defects, the availability of salacious literature, over-emphasis on violence

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9. Tunley, *Kids, Crime and Chaos* 11 (1962).



and brutality in the entertainment media, public failure to provide adequate facilities for caring for the child in trouble.

In a free society, the fundamental responsibility for children rests with the parent. If that parent has no desire to have his child end up as a crime statistic, he must face up to the problem of youthful criminality and ask himself some searching questions and take some very definite action.

He must demand that realistic sentences be meted out to those involved in crimes of violence. He must try to keep hardened young hoodlums who have been placed in institutions separate from the immature juvenile who fits more truly in the category of delinquent than criminal. He must increase his efforts to rehabilitate the young offender in preparation for a return to society. He must seek to overcome the fallacy of economizing in the quality and quantity of juvenile courts. He must seek to correct misguided policies which encourage criminal activity, resulting in the arrogant attitude: "You can't touch me. I'm a juvenile!" He must try to distinguish between sense and sentimentality in the treatment accorded the youthful lawbreaker. He should make it his business to learn whether arbitrary restrictions are hindering local authorities from taking realistic measures to deal with young punks. He must ask himself whether juveniles who commit serious crimes deserve the privilege of anonymity. Similarly, he must ask himself if the past records of such an offender should be readily available to appropriate law enforcement officers, and whether these juveniles should be fingerprinted for future identification. Finally, he should make every effort to discourage development of the belief among some juveniles that the youthful culprit can "get away with it," and that, if caught, there will be little likelihood of punishment.

There will be approximately 1,150 babies born in the United States today.<sup>10</sup> When these babies become teen-agers, it can be anticipated that, based upon known crime statistics for young people, more than 45 arrests for criminal acts will be recorded for these children. No doubt these figures will change before this group of 1,150 passes from age 10 to 18. Hopefully, the trend will be downward; however, it could be tragic if nothing but hope is brought to bear on the problem of youthful criminality. Our nation cannot survive the loss of increasing blocs of its young people each year into the crime statistics columns.

Either we solve the problem or we may well go down!

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10. Bureau of the Census, U.S. Department of Commerce, which estimates one child is born in the United States every 7 1/2 seconds.